

House Bill 991 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 49th, Geisinger of the 48th, Powell of the 171st, and Thompson of the 104th

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the joint county and municipal sales and use tax, so as to revise comprehensively provisions regarding distribution of proceeds and renegotiation of distribution certificates; to provide for procedures, conditions, and limitations; to provide for applicability regarding certain new qualified municipalities or newly expanded qualified municipalities; to change provisions relating to the procedure for call of a referendum election on discontinuing imposition of the tax; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the joint county and municipal sales and use tax, is amended by revising subsection (d) of Code Section 48-8-89, relating to the distribution of proceeds and the renegotiation of distribution certificates, as follows:

"(d)(1) ~~Except as otherwise provided in paragraph (7) of this subsection, a~~ A certificate providing for the distribution of the proceeds of the tax authorized by this article shall expire on December 31 of the second year following the year in which the decennial census is conducted. No later than December 30 of the second year following the year in which the census is conducted, a ~~renegotiated~~ new distribution certificate meeting the requirements for certificates specified by subsection (b) of this Code section shall be filed with and received by the commissioner. The General Assembly recognizes that the requirement for government services is not always in direct correlation with population. Although a ~~renegotiated~~ new distribution certificate is required within a time certain of the decennial census, this requirement is not meant to convey an intent by the General Assembly that population as a criterion should be more heavily weighted than other criteria. It is the express intent of the General Assembly in requiring such renegotiation

that eligible political subdivisions shall analyze local service delivery responsibilities and the existing allocation of proceeds made available to such governments under the provisions of this article and make rational the allocation of such resources to meet such service delivery responsibilities. Political subdivisions in their renegotiation of such distributions shall at a minimum consider the criteria specified in subsection (b) of this Code section.

(2) The commissioner shall be notified in writing of the commencement of renegotiation proceedings by the county governing authority ~~in~~ on behalf of all eligible political subdivisions within the special district. The eligible political subdivisions shall commence renegotiations at the call of the county governing authority ~~but no later than~~ before July 1 of the second year following the year in which the census is conducted. If the county governing authority does not issue the call by that date, any eligible municipality may issue the call and so notify the commissioner and all eligible political subdivisions within the special district.

(3) Following the commencement of such renegotiation, if the parties necessary to an agreement fail to reach an agreement within 60 days, such parties shall ~~agree to~~ submit the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts in a manner which, ~~in the judgment of the commissioner, reflects a good faith effort to resolve~~ attempts to reach a resolution of the dispute. Any renegotiation agreement reached pursuant to this paragraph shall be in accordance with the requirements specified in paragraph (1) of this subsection.

(4)(A) If the parties necessary to an agreement fail to reach an agreement within 60 days of submitting the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts, as required by paragraph (3) of this subsection, any of such parties may file a petition in superior court of the county seeking resolution of the items remaining in dispute. Such petition shall be filed no later than 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of this subsection. Such petition shall be assigned to a judge pursuant to Code Section 15-1-9.1 or 15-6-13 who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit.

(B) Following the filing of the petition as specified under subparagraph (A) of this paragraph, the county and qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district shall separately submit to the judge and the other parties a written best and final offer specifying the distribution of the tax proceeds. There shall be one such offer from the county and one such offer from qualified

municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district. The offer from the county may be an offer representing the county and any qualified municipalities that are not represented in the offer from the qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district.

(C) Any qualified municipality or municipalities located wholly or partially within the special district who are not a party to an offer under subparagraph (B) of this paragraph, and who represent at least one-half of the aggregate municipal population of all qualified municipalities who are not a party to an offer under subparagraph (B) of this paragraph, shall be authorized to separately submit to the judge and the other parties a written best and final offer specifying the distribution of the tax proceeds. There shall be one such offer from such qualified municipality or municipalities.

(D) Each offer under subparagraphs (B) and (C) of this paragraph shall take into account the allocation required for any absent municipalities in accordance with subsection (b) of this Code section. The judge shall conduct such hearings as the judge deems necessary and shall render a decision based on the requirements and intent of paragraph (1) of this subsection and the criteria in subsection (b) of this Code section. The judge's decision shall adopt the best and final offer of one of the parties submitted under subparagraphs (B) and (C) of this paragraph specifying the allocation of the tax proceeds and shall also include findings of fact. The judge shall enter a final order containing a new distribution certificate and transmit a copy of it to the commissioner.

(E) A final order entered under subparagraph (D) of this paragraph shall be subject to appeal by application upon one or more of the following grounds:

(i) The judge's disregard of the law;

(ii) Partiality of the judge; or

(iii) Corruption, fraud, or misconduct by the judge or a party.

(F) During the process set forth in this paragraph, the commissioner shall continue to distribute the sales tax proceeds according to the percentages specified in the most recently filed distribution certificate or in accordance with subsection (f) of Code Section 48-8-89.1, as applicable, until a new distribution certificate is properly filed.

~~(4)(5) If the renegotiated a new distribution certificate as provided for in paragraph (1) of this subsection Code section is not received by the commissioner by the required date, the authority to impose the tax authorized by Code Section 48-8-82 shall cease, on December 31 of the second year following the year in which the decennial census is conducted and the tax shall not be levied in the special district after such date unless the reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85.~~

When the imposition of the tax is so terminated, the commissioner shall retain the proceeds of the tax which were to be distributed to the governing authorities of the county and qualified municipalities within the special district until the commissioner receives a certificate ~~in~~ on behalf of each such governing authority specifying the percentage of the proceeds which each such governing authority shall receive. If no such certificate is received by the commissioner within 120 days of the date on which the authority to levy the tax was terminated, the proceeds shall escheat to the state, and the commissioner shall transfer the proceeds to the state's general fund.

~~(5)~~(6) If the commissioner receives ~~the renegotiated~~ a new distribution certificate by the required date, the commissioner shall distribute the proceeds of the tax in accordance with the directions of the ~~renegotiated~~ new distribution certificate commencing on January 1 of the year immediately following the year in which such certificate was ~~renegotiated~~ executed by the parties or the judge or the first day of the second calendar month following the month such certificate was ~~renegotiated~~ executed by the parties or the judge, whichever is sooner.

~~(6)~~(7) Costs of any conflict resolution under paragraph (3) ~~or~~ (4) of this subsection shall be borne proportionately by the affected political subdivisions in accordance with the final percentage distributions of the proceeds of the tax as reflected by the ~~renegotiated~~ new distribution certificate.

~~(7) All distribution certificates on file with the commissioner on July 1, 1994, which were not renegotiated in accordance with the 1990 decennial census figures or renegotiated on or after January 1, 1992, shall expire on December 31, 1995. Renegotiations with respect to such certificates shall be commenced in accordance with the requirements of this subsection on or before July 1, 1994. If a renegotiated certificate is not received by the commissioner by July 1, 1995, the authority to impose the tax authorized by Code Section 48-8-82 shall cease on December 31, 1995, and the tax shall not be levied in the special district after that date unless reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. The commissioner shall retain and distribute the proceeds of such terminated tax in accordance with paragraph (4) of this subsection.~~

~~(8) No qualified municipality within the special district whose population is less than 5 percent of the population in the special district according to the United States decennial census of 1990 shall receive a reduced percentage of distribution than presently being received under the existing certificate prior to renegotiations required in paragraph (7) of this subsection unless the new agreement is executed by the qualified municipality. This paragraph shall apply only to the negotiations required by paragraph (7) of this subsection and shall not apply to any subsequent renegotiations required by this subsection.~~

(9)(8) Political subdivisions shall be authorized, at their option, to renegotiate distribution certificates on a more frequent basis than is otherwise required under this subsection.

(10)(9) No provision of this subsection shall apply to any county which is authorized to levy or which levies a local sales tax, local use tax, or local sales and use tax for educational purposes pursuant to a local constitutional amendment or to any county which is authorized to expend all or any portion of the proceeds of any sales tax, use tax, or sales and use tax for educational purposes pursuant to a local constitutional amendment."

SECTION 2.

Said article is further amended by revising subsection (b) of Code Section 48-8-89.1, relating to certification of additional qualified municipalities and lapsing of the tax due to failure to file a new certificate, as follows:

"(b) Within 60 days after the effective date of the notice referred to in subsection (a) of this Code section, a new distribution certificate shall be filed with the commissioner for the special district or, within 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the county, any qualified municipality located wholly or partially within the special district, or any new qualified municipality as specified under subsection (a) of this Code section located wholly or partially within the special district may file a petition in superior court seeking resolution of the items remaining in dispute pursuant to the procedure set forth in paragraph (4) of subsection (d) of Code Section 48-8-89. In the event such a petition is filed, a new qualified municipality as specified under subsection (a) of this Code section located wholly or partially within the special district shall be subject to the same requirements applicable to qualified municipalities located wholly or partially within the special district under paragraph (4) of subsection (d) of Code Section 48-8-89. This The new distribution certificate shall specify by percentage what portion of the proceeds of the tax available for distribution within the special district shall be received by the county in which the special district is located and by each qualified municipality located wholly or partially within the special district, including the new qualified municipality. No distribution certificate ~~may~~ shall contain a total of specified percentages in excess of 100 percent."

SECTION 3.

Said article is further amended by revising paragraph (3) of subsection (f) of Code Section 48-8-89.1, relating to certification of additional qualified municipalities and lapsing of the tax due to failure to file a new certificate, as follows:

"(3) Within 60 days after the effective date of the notice referred to in paragraph (2) of this subsection, a new distribution certificate shall be filed with the commissioner for the special district or, within 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the county, any qualified municipality located wholly or partially within the special district, or any new qualified municipality or newly expanded qualified municipality located wholly or partially within the special district may file a petition in superior court seeking resolution of the items remaining in dispute pursuant to the procedure set forth in paragraph (4) of subsection (d) of Code Section 48-8-89. ~~This~~ The new distribution certificate shall address only the proceeds of the tax available for distribution from the percentage allocated to the county in the current distribution certificate and shall specify as a percentage of the total proceeds of the tax what portion of the proceeds shall be received by the county in which the special district is located and by the new qualified municipality and newly expanded qualified municipality located wholly or partially within the special district, if any."

SECTION 4.

Said article is further amended by revising Code Section 48-8-92, relating to the referendum election on discontinuing imposition of the tax, as follows:

"48-8-92.

(a) Whenever the governing authority of any county ~~or~~ and the governing authorities of at least one-half of qualified municipality municipalities located wholly or partially within a special district in which the tax authorized by this article is being levied ~~wishes~~ wish to submit to the electors of the special district the question of whether the tax authorized by Code Section 48-8-82 shall be discontinued, ~~the~~ such governing ~~authority~~ authorities shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a joint resolution of the governing ~~authority~~ authorities calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the tax to the voters of the special district for approval or rejection. The election superintendent shall ~~set the date of the election for a day not less than 30 nor more than 45 days after the date of the issuance of the call~~ issue the call and shall conduct the election

on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the following:

' () YES Shall the 1 percent retail sales and use tax being levied within the special
() NO district within _____ County be terminated?'

(b) All persons desiring to vote in favor of discontinuing the tax shall vote 'Yes,' and all persons opposed to discontinuing the tax shall vote 'No.' If more than one-half of the votes cast are in favor of discontinuing the tax, then the tax shall cease to be levied on the first day of the second calendar quarter following the month in which the commissioner receives the certification of the result of the election; otherwise, the tax shall continue to be levied, and the question of the discontinuing of the tax ~~may~~ shall not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be ~~his~~ such superintendent's further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election."

SECTION 5.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.